

Court No. - 3

Case :- WRIT - C No. - 30654 of 2023

Petitioner :- Arshiya Pasha

Respondent :- Additional District Magistrate And 5 Others

Counsel for Petitioner :- Atul Kumar Tiwari, Abhishek Mishra

Counsel for Respondent :- C.S.C., Rajesh Kumar Srivastava

Hon'ble Siddhartha Varma, J.

Hon'ble Shekhar B. Saraf, J.

1. Instructions filed today be kept on record. Vakalatnama filed by Sri Kavindra Singh, learned counsel on behalf of respondent no. 4 be also kept on record.

2. This writ petition reveals a strange state of affairs. The auction had taken place of the property in question on 23.01.2015 and thereafter, the sale certificate was also issued to the petitioner. It appears that the petitioner is running from pillar to post to get the possession of the property in question. When possession was not being handed over to the petitioner, the instant writ petition was filed. On 18.10.2023 we had passed the following order:-

"Grievance of the petitioner is that despite the fact that order for taking the possession of the property has been passed on 10.08.2018 but the possession of the property has not been taken over by the State and the same has not been handed over to the petitioner. He further states that even the sale of the property has taken place in favour of the petitioner.

Learned Additional Chief Standing Counsel Ms. Priyanka Middha may take instructions in the matter.

This order was passed in the presence of Sri K.M.Asthana.

List this case as fresh on 22.11.2023."

3. Today, Ms. Priyanka Midha, learned Additional Chief Standing Counsel informs that on 29.11.2023 the District Magistrate had made an endeavour to

hand over the property to the Authorized Officer of the respondent nos. 2 & 3 Asset Reconstruction Company India Ltd. (hereinafter referred to as the "ARCIL"). However, when no Authorised Officer of the respondent nos. 2 & 3 appeared on the spot, the possession could not be handed over and, therefore, the possession in its turn could not be given to the petitioner.

4. Sri Kavindra Singh, learned counsel who has appeared on behalf of the respondent no. 4 has produced an order of the Debts Recovery Tribunal dated 28.11.2023 passed in Securitisation Application No. 442 of 2023 which is reproduced here as under:

"Sh. Rakesh Mihsra (sic) Ld. counsel for the S. Applicants is present.

Sh. A.P. Singh Ld. counsel for the Respondent FI is present.

Miss Arpita Tarmali BH of Sh. S.K. Gupta Ld. counsel for the auction purchaser is present.

The Applicant has filed amendment application vide which notice issued by ACM Varanasi on 23.11.2023 has been challenged and ACM Varanasi is going to take take (sic) physical possession on 29.11.2023. Request is made that amendment application may be allowed.

Considered.

The amendment application shall be part of the S.A.

Ld. counsel for the respondent bank submitted that respondent bank/civil authority is not going to take physical possession of the property in question on 29.11.2023, therefore, this amendment application become infructuous.

Respondent FI/Civil Authority is hereby directed that whenever Respondent FI/Civil Authority will go to take physical possession of the property, they shall serve

15 days notice.

Ld. counsel for the respondent FI seeks time to file reply.

In the interest of justice, case is adjourned.

Post the matter on 18.01.2024 for reply."

5. We do find that this Securitisation Application has been filed very belatedly and that too when the writ petition was filed.

6. Under such circumstances we direct that as and when possession is taken over from the respondent no. 4 and handed over to the Authorized Officer for being handed over to the petitioner, the order dated 28.11.2023 shall be followed and the Authorities shall give fifteen days' notice as per the order dated 28.11.2023 to the borrower.

7. With the above directions, the writ petition stands **disposed of**.

Order Date :- 1.12.2023

M.S. Ansari